

1 5285  
RECORDATION NO. 1425

KIRKPATRICK & LOCKHART

SOUTH LOBBY - 9TH FLOOR 1 5285  
1800 M STREET, N.W.  
WASHINGTON, D.C. 20036-5891  
RECORDATION NO. 1425

EXCHANGE PLACE  
53 STATE STREET  
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JUL 14 1987 -3 00 PM

INTERSTATE COMMERCE COMMISSION

TELEPHONE (202) 778-9000

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1428 BRICKELL AVENUE  
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1 5285  
RECORDATION NO. 1425

INTERSTATE COMMERCE COMMISSION

1500 OLIVER BUILDING  
PITTSBURGH, PA 15222-5379  
(412) 355-6500

WRITER'S DIRECT DIAL NUMBER

July 14, 1987

JUL 14 1987 -3 00 PM

7-195A060

Noreta R. McGee  
Secretary  
INTERSTATE COMMERCE COMMISSION  
Interstate Commerce Commission  
Room 1324  
12th & Constitution Avenue, N.W.  
Washington, D. C. 20423

1 5285  
RECORDATION NO. 1425

JUL 14 1987 -3 00 PM

INTERSTATE COMMERCE COMMISSION

Re: Shawmut Bank, N.A./Springfield Terminal  
Railway Company Equipment Lease

No.   
Date JUL 14 1987  
Fee \$ 50.00  
ICC Washington, D.C.

Dear Madam Secretary:

I have enclosed an original and one duplicate copy of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

The documents to be recorded are as follows:

- (1) A Master Equipment Lease Agreement No. 1 dated as of July 13, 1987 between Shawmut Bank, N.A. as lessor and Springfield Terminal Railway Company as lessee;
- (2) Rental Schedules No. A001 and A002 relating to the aforementioned Master Equipment Lease Agreement No. 1; and
- (3) A Guaranty Agreement by Boston and Maine Corporation and Maine Central Railroad Company guarantying the obligations of the lessee pursuant to the Master Equipment Lease Agreement No. 1.

The names and addresses of the parties to the documents are as follows:

(1) Lessor:

Shawmut Bank, N.A.  
One Federal Street  
Boston, MA 02211

Attention: Equipment Finance and  
Leasing Division

ICC OFFICE OF  
THE SECRETARY  
JUL 14 3 46 PM '87  
MOTOR OPERATING UNIT

KIRKPATRICK & LOCKHART

Noreta R. McGee  
July 14, 1987  
Page 2

(2) Lessee:

Springfield Terminal Railway Company  
P.O. Box 490  
Sterling, MA 01545

(3) Guarantors:

Boston and Maine Corporation  
Iron Horse Park  
N. Billerica, MA 01862

and

Maine Central Railroad Company  
Iron Horse Park  
N. Billerica, MA 01862

The equipment subject to the lease constitute 35 General Motors SD-26 4600 class locomotives bearing lessee's serial numbers ST614 through 629 inclusive and ST631 through 649 inclusive. One TKO-710 one piece tie remover manufactured by Porteck, Inc. and one Kershaw on-track brush cutter model 32-8 serial no. 32-142-87.

A short summary of the document to appear in the index is as follows:

(1) Type of document; Lease between Shawmut Bank, N.A., One Federal Street, Boston, MA, as lessor, and Springfield Terminal Railway Company, P.O. Box 490, Sterling, MA, as lessee, dated as of July 13, 1987 and covering 35 General Motors SD-26 4600 class locomotives, one Kershaw on-track brush cutter and one Porteck tie remover.

(2) Guaranty Agreement by Boston and Maine Corporation, Iron Horse Park, N. Billerica, MA and Maine Central Railroad Company, Iron Horse Park, N. Billerica, MA guarantying lessee's obligations under said lease.

KIRKPATRICK & LOCKHART

Noreta R. McGee  
July 14, 1987  
Page 3

I also enclose requisite filing fee and request that recorded documents be returned to me as counsel for Lessee.

Very truly yours,

*Joseph C. Kennedy by foy*  
Joseph C. Kennedy, Jr.

Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 15, 1987

Joseph C. Kennedy, Jr.  
Kirkpatrick & Lockhart  
South Lobby-9th Floor  
1800 M. Street, N. W.  
Washington, D. C. 200;6-5891

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/14/87 at 3:50 PM, and assigned recordation number(s).

2 - A, B and C

Sincerely yours,

*Noreta R. McGehee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

LESSOR'S  
ORIGINAL

1 5285  
RECORDATION NO. .... Filed 1426  
JUL 14 1987 3 50 PM  
INTERSTATE COMMERCE COMMISSION

MASTER EQUIPMENT LEASE AGREEMENT

NO. 1

Dated as of July 13, 1987

BETWEEN

SHAWMUT BANK, N.A.

(LESSOR)

AND

SPRINGFIELD TERMINAL RAILWAY COMPANY

(LESSEE)

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EXHIBIT A: Rental Schedule and Certificate of Inspection and  
Acceptance with Stipulated Loss Values

MASTER EQUIPMENT LEASE AGREEMENT NO. 1, dated as of July 13, 1987, between SHAWMUT BANK, N.A., One Federal Street, Boston, Massachusetts 02211 (the "Lessor") and SPRINGFIELD TERMINAL RAILWAY COMPANY, a Vermont corporation, having a principal place of business at P.O. Box 490, Sterling, Massachusetts 01546 (the "Lessee").

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. DEFINITIONS. For purposes of this agreement, the following terms shall have the following meanings:

(a) "ACQUISITION COST" of any item of Equipment means an amount equal to the sum of (i) the purchase price of such item of Equipment to be paid by Lessor, plus, (ii) any excise, sales and use tax on or with respect to such item of Equipment actually paid upon acquisition of the Equipment, plus (iii) any reasonable costs, expenses and fees paid or incurred by Lessor in obtaining or delivering such item of Equipment to Lessee and any expenses of installation of such item of Equipment paid for by Lessor.

(b) "ADDITIONAL RENT" shall have the meaning specified in Section 6 hereof.

(c) "BASIC RENT" with respect to any item of Equipment shall have the meaning specified in the Rental Schedule for such item of Equipment.

(d) "CASUALTY OCCURRENCE" shall have the meaning specified in Section 14 hereof.

(e) "CERTIFICATE OF INSPECTION AND ACCEPTANCE" means the certification contained in the Rental Schedule and Certificate of Inspection and Acceptance, substantially in the form attached hereto as Exhibit A and incorporated herein by reference, to be executed by Lessee, and reflecting the date of Lessee's acceptance of Equipment for lease hereunder of any Equipment delivered to Lessee.

(f) "CARS" shall have the same meaning as "Equipment."

(g) "CLAIMS" shall have the meaning specified in Section 7 hereof.

(h) "CODE" shall mean the Internal Revenue code of 1986, as amended.

(i) "CORPORATE BASE RATE" shall mean the interest rate from time to time announced by Shawmut Bank, N.A. as its "Corporate Base Rate" at its offices in Boston, Massachusetts.

(j) "DEFAULT INTEREST RATE" shall have the meaning specified in Section 6 hereof.

(k) "EQUIPMENT" means equipment leased or to be leased by Lessor to Lessee hereunder or ordered by Lessor for lease to Lessee hereunder, together with any and all accessions, additions, improvements and replacements, from time to time incorporated or installed therein which are property of Lessor pursuant to the terms of this Lease.



(l) "EVENTS OF DEFAULT" shall have the meaning specified in Section 20 hereof.

(m) "FEES AND TAXES" shall have the meaning specified in Section 9 hereof.

(n) "INTERIM RENT" shall commence upon Lessee's execution of the "Rental Schedule and Certificate of Inspection and Acceptance" for each Rental Schedule and shall end upon the commencement of the Primary Term.

(o) "INTERIM TERM" shall commence upon Lessee's execution of the "Rental Schedule and Certificate of Inspection and Acceptance" for each Rental Schedule and shall end upon the commencement of the Primary Term.

(p) "LEASE" means each Rental Schedule which incorporates all the terms and conditions of this Master Equipment Lease Agreement.

(q) "LEASE TERM" for each Rental Schedule shall mean the "Interim Term" (if any) and the "Primary Term".

(r) "LEASE COMMENCEMENT DATE" with respect to an item of Equipment means the date of the commencement of the Lease Term of such item and shall be the date such item is accepted by Lessee for lease hereunder.

(s) "LESSEE'S USE" shall have the meaning specified in Section 10 hereof.

(t) "LESSOR'S RIGHTS AND REMEDIES" shall have the meaning specified in Section 21 hereof.

(u) "MANUFACTURER(S)" shall mean the manufacturer(s) and/or remanufacturers listed for each item of Equipment on each Rental Schedule.

(v) "PAYMENT DATES" with respect to an item of Equipment shall have the meaning specified in the Rental Schedule for such item of Equipment.

(w) "PRIMARY TERM" for each Rental Schedule shall commence and shall end on the dates set forth therein.

(x) "RENTAL SCHEDULE" means a schedule to be executed by Lessor and Lessee, substantially in the form attached hereto as Exhibit A and incorporated herein by reference and marked "Rental Schedule and Certificate of Inspection and Acceptance", setting forth a full description of the Equipment to be leased hereunder, its location, Acquisition Cost, the amount of rent payable by Lessee with respect thereto, the Lease Term thereof, the Lease Commencement Date with respect thereto, and such other details as Lessor and Lessee may desire. Such Rental Schedule shall incorporate by reference the terms of this Master Equipment Lease Agreement.

(y) "STIPULATED LOSS VALUE" means, for any Equipment or item of Equipment, the Stipulated Loss Value set forth or referred to in the Rental Schedule relating to such Equipment or item of Equipment.

## 2. LEASE OF EQUIPMENT.

(a) The Lessor agrees to let to the Lessee, and the Lessee agrees to lease from the Lessor such Equipment as may be

mutually agreed, in the manner and upon such terms and conditions specified in this Master Equipment Lease Agreement. Lessee shall evidence its request to Lessor to lease particular items of Equipment to Lessee hereunder by executing and delivering a Rental Schedule for such Equipment to Lessor. Lessee's execution of such Rental Schedule shall obligate Lessee to lease the Equipment described herein from Lessor upon the acceptance, as provided in Section 3, of such Equipment by Lessee. Each Rental Schedule shall constitute a separate Lease.

(b) Lessee agrees, subject to its right of quiet enjoyment set forth in Section 13, that its obligations under this Lease are absolute and unconditional, without right of set-off or recoupment, and shall continue in full force and effect regardless of any inability of Lessee to use the Equipment or any part thereof for any reason whatsoever including, without limitation, war, riot, insurrection, act of God, storms, government regulations, strike, other labor troubles, loss, damage, destruction, obsolescence, failure of the Equipment to properly operate, improper installation or condition, suitability or adaptability of the Equipment for Lessee's cause or purpose, breach of warranty, acts or covenants of the Manufacturer or vendor, or any other cause. Subject to any early termination provision in or made a part of any Rental Schedule, this Lease is irrevocable by Lessee for the full term hereof and for the aggregate rental herein reserved and the rental shall not abate by reason of termination of Lessee's right of possession.

3. DELIVERY AND ACCEPTANCE OF EQUIPMENT.

(a) Lessor and Lessee understand that the Manufacturer or vendor of the Equipment will deliver the Equipment to the premises of Lessee specified in the Rental Schedule and such delivery shall be deemed to be delivery of the Equipment by Lessor to Lessee hereunder. Lessor hereby authorizes Lessee as its agent to accept for Lessor, and in Lessor's name, the Equipment from said Manufacturer or vendor upon delivery. Upon such delivery, Lessee shall cause an inspector or inspectors of Lessee to inspect the Equipment, and if it is found to be acceptable, to accept delivery of such Equipment and execute and deliver to Lessor a Certificate of Inspection and Acceptance stating that such Equipment has been inspected and accepted and is marked in accordance with Section 8 hereof, whereupon such Equipment shall be deemed to have been delivered to and accepted by Lessee and shall be subjected thereafter to all terms and conditions of this Master Equipment Lease Agreement and the Rental Schedule applicable thereto.

(b) Lessee agrees that Lessee's acceptance for Lease hereunder of any Equipment as evidenced by its execution of a Certificate of Inspection and Acceptance with respect thereto shall constitute Lessee's acknowledgment that such Equipment:

(i) is of a size, design, capacity and manufacture acceptable to Lessee for lease hereunder, and;

(ii) otherwise conforms to the requirements hereof and the Rental Schedule and is subject to all of the terms and

conditions of this Master Equipment Lease Agreement and the Rental Schedule applicable thereto.

4. DISCLAIMER OF WARRANTIES. LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER OR THAT IT COMPLIES WITH ANY REQUIREMENT OF ANY FEDERAL OR STATE LAW, OR ANY RULE OR REGULATION ISSUED PURSUANT THERETO. EACH ITEM OF EQUIPMENT IS LEASED "AS IS", "WHERE IS" IN THE CONDITION IN WHICH IT IS DELIVERED TO LESSEE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE FOR ANY DEFECTS, EITHER LATENT OR PATENT IN ANY OF THE EQUIPMENT, OR FOR ANY DIRECT OR CONSEQUENTIAL DAMAGE THEREFROM, AND SHALL NOT BE LIABLE TO LESSEE FOR LOSS OF USE OF ANY OF THE EQUIPMENT OR ANY INTERRUPTION IN LESSEE'S BUSINESS OCCASIONED BY LESSEE'S INABILITY TO USE ANY OF THE EQUIPMENT FOR ANY REASON WHATSOEVER. HOWEVER, LESSOR WILL TAKE ANY REASONABLE STEPS WITHIN ITS POWER TO MAKE AVAILABLE TO LESSEE ANY MANUFACTURER'S OR SIMILAR WARRANTY APPLICABLE TO THE EQUIPMENT AND MAKE ANY ASSIGNMENT OR OTHER TRANSFER OF RIGHTS IN AND TO SUCH WARRANTY. ACCEPTANCE OF THIS SECTION 4 BY LESSEE IN NO MANNER RESTRICTS LESSEE'S ABILITY TO RECOVER HEREUNDER FROM THE MANUFACTURER OR VENDOR OF THE EQUIPMENT. LESSEE ACKNOWLEDGES THAT NEITHER THE VENDOR OF THE EQUIPMENT LEASED HEREUNDER NOR ANY SALESPERSON, EMPLOYEE, REPRESENTATIVE, OR AGENT OF SAID VENDOR IS AN AGENT OR REPRESENTATIVE OF LESSOR AND THAT NONE OF

THE ABOVE PERSONS HAS AUTHORITY TO WAIVE OR MODIFY IN ANY WAY ANY TERM, PROVISION, OR CONDITION OF THIS LEASE OR TO MAKE ANY REPRESENTATION, COVENANT, OR WARRANTY WITH RESPECT TO THIS LEASE, OR WITH RESPECT TO ANY EQUIPMENT LEASED HEREUNDER WHICH WOULD IN ANY WAY MODIFY LESSEE'S OBLIGATIONS UNDER THIS MASTER EQUIPMENT LEASE AGREEMENT AND APPLICABLE RENTAL SCHEDULE.

5. LEASE TERM. The Equipment is leased for a Lease Term as defined herein, unless and until the term of this Lease shall expire, be extended or be terminated pursuant to any provision hereof. The Interim Term, if any, and the Primary Term shall commence and expire on the dates set forth in Section 1 herein, and as more particularly set forth in the Rental Schedule applicable to the item of Equipment in question. The provisions of Section 10 below shall apply as between Lessor and Lessee with respect to any Equipment from the time the Equipment is ordered by Lessor. Lessee hereby authorizes Lessor to insert the Lease Commencement Date for an item of Equipment on the Rental Schedule therefor when such item has been accepted by Lessee for lease hereunder as evidenced by Lessee executing and delivering to Lessor a Certificate of Inspection and Acceptance for such item or items of Equipment.

6. RENT.

(a) This Master Equipment Lease Agreement and each Lease are net Leases and Lessee shall pay the Lessor as fixed rent for the Interim Term and Primary Term, the amount set forth in

the applicable Rental Schedule ("Basic Rent") on the dates set forth therein ("Payment Dates").

(b) In addition to the Basic Rent, Lessee also agrees to pay Lessor when due or otherwise on demand all amounts which Lessee is required to pay pursuant to this Lease (including, without limitation, Interim Rent) together with every fine, penalty, interest and cost which may be added for nonpayment or late payment ("Additional Rent"). If any Basic Rent or Additional Rent is not paid when due, Lessee agrees to pay interest on such overdue amount until paid at a rate equal to 200 basis points in addition to the Corporate Base Rate set by the Shawmut Bank of Boston, N.A. at that time, but not exceeding the lawful maximum rate of interest, if any ("Default Interest Rate").

7. LESSEE'S REPRESENTATIONS, COVENANTS AND WARRANTIES.

Lessee represents, covenants, and warrants for the benefit of Lessor and if reasonably required by Lessor, will endeavor to provide an opinion of counsel and other supporting documents to the effect that:

(a) Lessee is a corporation legally incorporated, validly existing, and in good standing, under the laws of its state of incorporation, with full corporate power and authority to enter into this Lease and to pay and perform its obligations hereunder and under this Lease;

(b) this Lease has been duly authorized, executed and delivered by Lessee and constitutes the valid, legal and bind-

ing obligation of Lessee enforceable in accordance with its terms;

(c) no approval is required by any regulatory body, nor from any parent or affiliate of Lessee (or, if required, has been obtained from a parent or affiliate organization of the Lessee) with respect to the entering into or performance of this Lease;

(d) the leasing of the Equipment hereunder by Lessee will not result in any breach of, or constitute a default under any agreement by which Lessee or its property is bound, or result in the creation of any claims, demands, liens, attachments, encumbrances, actions, causes of action, executions, judgements or expenses (including, without limitation, attorneys' reasonable fees, expenses and disbursements) (collectively, "Claims") in or upon any Equipment pursuant to, any indenture, mortgage, deed of trust, or other lien of any nature whatsoever, which now covers or affects, or which may hereafter cover or affect any property or interest therein of Lessee, now attaches or hereafter will attach to the Equipment leased hereunder or in any manner affects or will affect adversely Lessor's right, title and interest therein;

(e) there are no actions, causes of actions, suits or proceedings pending, or to the knowledge of Lessee threatened, in any court or before any regulatory commission, board or other governmental agency or authority against or affecting Lessee or any Guarantor of Lessee's obligations hereunder (a "Guaran-



tor"), which will have or could have a material adverse effect on the financial condition or business of Lessee or any Guarantor;

(f) except as heretofore disclosed to Lessor by Lessee, there has been no material adverse change to Lessee's or any Guarantor's financial condition since the date of Lessee's or such Guarantor's most recent financial statements provided to Lessor by Lessee or such Guarantor;

(g) no mortgage, deed of trust, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interests therein of Lessee or any of its subsidiaries now attaches or hereafter will attach to any item of Equipment, or in any manner affects or will affect adversely the Lessor's right, title and interest therein;

(h) this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and such filing and recordation will provide notice to all persons of Lessor's interest in and to the Equipment and the Lease in the United States and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to provide such notice in the United States, and

(i) the participation and performance of its obligations under this Lease by the Lessee and the Lessor will not subject Lessor to the jurisdiction of or regulation by the Interstate Commerce Commission or the Securities and Exchange Commission.

8. IDENTIFICATION MARKS. Lessee will, at its own cost and expense, cause each Car to be kept numbered with the identifying number set forth in the Rental Schedule, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Car, in letters not less than one (1) inch in height, the name of Lessor followed by the legend "Owner-Lessor", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to and property interest in such Car and the rights of Lessor under this Lease. Lessee will not place any Car in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, eroded, defaced or destroyed. Lessee will not change the identifying number of any Car except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited. Except as provided above in this Section 8, Lessee will not allow the name of any person, association or corporation to be placed on any Car as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may allow the Cars to be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates on railroad equipment

used by them of the same or a similar type for convenience of identification of their rights to use the Cars as permitted under this Lease.

9. FEEES AND TAXES.

(a) From and after the commencement of this Lease, Lessee agrees to pay promptly when due, and to indemnify and hold Lessor harmless from:

(i) all license, title and registration fees of every type and nature whatsoever;

(ii) all levies, imposts, duties, charges or withholdings of every type and nature whatsoever; and

(iii) all sales, use, personal property, stamp and other taxes of every type and nature whatsoever (together with any penalties, fines or interest thereon, excluding such costs that are attributable to negligent acts of the Lessor)

(as described in the foregoing clauses (i),(ii) and (iii), collectively, "Fees and Taxes"), whether the same are assessed, levied or imposed by any governmental or taxing authority against or upon Lessor or otherwise, with respect to any Equipment or the purchase, acquisition, ownership, delivery, leasing, possession, use, operation, control, return or other disposition thereof, or the rents, receipts or earnings arising therefrom, or with respect to this Lease, excluding, however, any federal, state or local taxes levied on Lessor's net

income, as net income is determined under the Code or any tax imposed in lieu of a tax on net income.

(b) In the event any such Fees and Taxes are paid by Lessor, or if Lessor is required to collect or pay any thereof, Lessee shall reimburse Lessor therefor (plus any penalties, fines or interest thereon) promptly upon demand. Lessee will file all personal property tax returns with respect to the Equipment, and (unless and until Lessor notifies Lessee in writing that Lessor is required to pay such taxes), Lessee will pay the personal property taxes levied or assessed thereon directly to the levying authority. Lessee will, promptly upon being invoiced by Lessor, reimburse Lessor for the full amount of such personal property taxes so paid by Lessor. All of the obligations of Lessee under this Section 9 with respect to any Fees and Taxes assessed, levied, imposed or accrued prior to the expiration or other termination of this Lease or Lease Term of all Equipment leased hereunder (or with respect to any period after the end of the Lease Term if an Event of Default shall have occurred and be continuing and Lessor shall be exercising remedies with respect thereto), shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by the Lessor.

10. INDEMNIFICATION BY LESSEE.

(a) The Lessee agrees to indemnify and hold Lessor, its agents, employees, officers, directors, successors, and

assigns, harmless from and, at the Lessee's own expense, shall defend the Lessor, its agents, employees, officers, directors, successors, and assigns from and against any and all liabilities relating to, or resulting from, or in any way arising out of:

- (i) Lessor's purchase and acquisition of any Equipment;

- (ii) the actual or alleged, acceptance, installation, manufacture, remanufacture, location, possession, maintenance, condition (including without limitation, latent and other defects whether or not discoverable by Lessor), use, operation, control, loss, damage, destruction, removal, transportation, return, storage, surrender, sale or other disposition of any Equipment (collectively, "Lessee's Use");

- (iii) any accident or other occurrence in connection with Lessee's Use of any Equipment resulting in or involving damage to property or injury to any person;

- (iv) all costs, charges, damages or expenses for royalties and/or claims and expenses of litigation, arising out of or in any way connected with the assertion of any Claims based upon any infringement or alleged infringement of any patent or other right by or in respect of any Equipment; or

- (v) strict liability in tort.

(b) If any party entitled to indemnity under this Section 10 or the Lessee shall have received written notice of any

liability indemnified against under this Section 10, it shall give prompt notice thereof to the Lessee, or the party entitled to be indemnified (an "Indemnatee"), as the case may be, but the failure to give such notice shall not affect any obligation under this Section 10. In case any action, including any investigatory proceeding, shall be brought against, or commenced with respect to, any Indemnatee in respect of which the Lessee is required to indemnify such Indemnatee pursuant to the provisions of this Section 10, the Lessee shall have the right to assume the defense thereof, including the employment of counsel satisfactory to such Indemnatee and the payment of all expenses. In the event the Lessee assumes the defense of any such action, any Indemnatee shall have the right to employ separate counsel in such action and participate therein, but the fees and expenses of such counsel shall be at the expense of such Indemnatee, unless (i) the employment of such counsel has been specifically authorized by the Lessee, (ii) the named parties to such action (including any impleaded parties) include both such Indemnatee and the Lessee and representation of such Indemnatee and the Lessee by the same counsel would be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them or (iii) the counsel employed by the Lessee and satisfactory to such Indemnatee has advised such Indemnatee, in writing, that such counsel's representation of such Indemnatee would be likely to involve such counsel in representing differ-

ing interests which could adversely affect either the judgment or loyalty of such counsel to such Indemnatee, whether it be a conflicting, inconsistent, diverse or other interest (in which case the Lessee shall not have the right to assume the defense of such action on behalf of such Indemnatee; it being understood, however, that the Lessee shall not, in connection with any one such action, or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys, and of any local counsel retained by said firm, at any one time for each such Indemnatee, which firm shall be designated in writing by such Indemnatee). The Lessee shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Lessee or if there be a final judgment, beyond further review or appeal, in any such action, the Lessee agrees to indemnify and hold harmless any Indemnatee from and against any loss or liability by reason of such settlement or judgment. The Lessee shall not settle any action without the Lessor's prior written consent, unless such settlement is solely for monetary damages, all of which are in fact paid by the Lessee.

(c) The indemnification by Lessee under this Section 10 shall survive the payment of all other obligations under, and termination of, this Master Equipment Lease Agreement and the Lease Term of all Equipment leased hereunder.

11. USE AND OPERATION OF EQUIPMENT.

(a) Lessee warrants and agrees that each item of Equipment will at all times while such item of Equipment is being utilized in revenue service:

(i) be used and operated under and be in compliance with the laws of the jurisdiction in which the Equipment may be located;

(ii) be in compliance with all laws of the jurisdictions in which operations involving any Car subject to this Lease may extend, with the interchange rules of the American Association of Railroads ("AAR") and the Federal Railroad Association ("FRA") and with all rules of the Department of Transportation ("DOT"), the Interstate Commerce Commission ("ICC") and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Car, to the extent such laws and rules affect the operations or use of such Car; and in the event such laws or rules require the alteration of any such Car, the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder;

(iii) be in compliance with all of the terms and conditions of any insurance policies required to be maintained hereunder; and



(iv) be solely used for commercial or business purposes.

(b) Lessee agrees to obtain and maintain in effect all licenses, certificates, permits and other approvals and consents, if any, required by federal, state, county, and municipal laws and regulations in connection with the possession, use, operation and maintenance of the Equipment.

12. IMPROVEMENTS, MAINTENANCE AND REPAIR OF EQUIPMENT.

(a) Lessee will, at its own expense, at all times with respect to such item of Equipment while such item of Equipment is being utilized in revenue service:

(i) maintain or cause to be maintained each Car in good order and repair, ordinary wear and tear only excepted and

(ii) keep, repair, maintain and preserve the Cars in conformity with all applicable laws and regulations, including, without limitation, the AAR Code of Interchange Rules and FRA Railroad Freight Car Safety Standards, 49 CFR Part 215, as amended. Lessee will, at its sole expense, make all ordinary and extraordinary repairs which may be required to keep the Equipment and each item thereof in good and efficient operating repair and condition. Lessee shall be entitled to perform such maintenance and repairs in accordance with its own reasonable business practices and schedules, provided however, that each Car shall be in Good Operating Condition (as defined in Section 18 hereof)

upon its return to Lessor pursuant to Section 18 hereof.

If repairs or alterations to the Cars not presently contemplated by the parties are required by any governmental or non-governmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars, Lessee shall make such repairs or alterations.

(b) Lessee shall promptly notify Lessor of any alleged liabilities with respect to the Equipment or any accident allegedly resulting from the use or operation thereof.

(c) Lessee shall not alter any Equipment or change or replace any equipment thereon or make any addition to any Equipment except in compliance with Section 12(a) and unless such alteration, change, replacement or addition will not diminish the value or utility of such Equipment below the value, utility and condition thereof, immediately prior to such alteration, change, replacement or addition, assuming such Equipment was then in the condition required to be maintained by the terms of this Lease. Any and all additions to any Equipment, and any and all parts installed on and additions and replacements made to any Equipment, shall constitute accessions to such Equipment and, at the cost and expense of Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in Lessor.

13. LESSOR'S REPRESENTATIONS, COVENANTS AND WARRANTIES.

Lessor hereby represents, covenants and warrants to Lessee that Lessor has the full right and authority to enter into this

Lease on the terms herein stated. Lessor further represents, covenants and warrants that so long as there shall have occurred no Event of Default hereunder, Lessee shall have the right peaceably and quietly to hold, possess and use the Equipment during the term of this Lease as against any interruptions by Lessor or any person claiming by, through, or under Lessor.

14. RISK OF LOSS. Until the Equipment has been redelivered to the Lessor and is in its possession as provided herein, the Lessee shall bear all risks of loss, damage, theft or destruction of the Equipment from whatsoever source arising. No such loss, damage, theft or destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee under this Lease, all of which shall continue in full force and effect. Lessee shall notify Lessor promptly in writing of any loss, damage, theft or destruction of any item of Equipment and of the circumstances and extent of such occurrence. In the event of any loss, damage, theft or destruction of the Equipment or any part thereof ("Casualty Occurrence"), the Lessee, at the Lessee's option, shall either (a) replace (with items of like value and utility assuming the replaced Equipment was at the time in Good Operating Condition), restore or repair the Equipment, or (b) pay to the Lessor an amount equal to the Stipulated Loss Value of the Equipment, if any, then applicable, as set forth in the Rental Schedule regarding such Equipment. In each case, the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise

for such loss, damage, theft or destruction shall be applied to the cost of effecting such replacement, restoration or repair, or shall reduce the amount otherwise payable by Lessee to Lessor after compliance with the foregoing to Lessor's satisfaction; provided, however, that so long as Lessee is not in default under this Lease, Lessee shall be subrogated to Lessor's rights with respect to any insurance policies maintained by Lessee or claims for reimbursement by others with respect to such loss, damage, theft or destruction, and in the event that Lessee exercises option (b) above, Lessee shall make said payments to Lessor on the Payment Date next following the date of such loss, damage, theft or destruction. Upon receipt of said payments, Lessor will transfer to Lessee, without recourse or warranty, on an "As Is", "Where Is" basis, all of Lessor's right, title and interest, if any, in and to the Equipment with respect to which such loss, damage, theft or destruction occurred and the right to any insurance or other proceeds due with respect to such item, whereupon this Lease with respect to that item of Equipment shall terminate and the rental amount associated with that item of Equipment shall cease. Lessor shall not be obligated to undertake, by litigation or otherwise, the prosecution of any claims against any person for loss, damage, theft or destruction of the Equipment.

15. LESSOR'S RIGHT TO PERFORM. If Lessee fails to duly and promptly perform any of its obligations under this Lease (except for the payment of rent) or fails to comply with any of

the covenants or agreements contained herein, Lessor may itself perform such obligations or comply with such covenants or agreements, for the account of Lessee without thereby waiving any default, and any amount paid or expense (including attorneys' reasonable fees, expenses, and disbursements) incurred by Lessor in connection with such performance or compliance shall, together with interest thereon at the Default Interest Rate, be payable by Lessee to Lessor on demand.

16. ANNUAL REPORTS; INSPECTION OF EQUIPMENT.

(a) On or before April 1 of each year, commencing with April 1 next following the date hereof, Lessee will cause to be furnished to Lessor, if requested, an accurate statement, as of the immediately preceding December 31:

(i) showing the amount, description and identifying numbers of all items of Equipment that may have suffered a Casualty Occurrence during the preceding twelve (12) months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of such items of Equipment as Lessor may request; and

(ii) stating that, in the case of all Equipment repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 8 have been preserved or replaced.

(b) Lessor shall have the right at its sole cost and expense during Lessee's normal business hours with reasonable

prior notice, by its authorized representatives to inspect the items of Equipment, and Lessee's records with respect thereto including, without limitation, records with respect to receivables, rentals received, and similar matters, during the Lease Term.

(c) At Lessor's request, Lessee shall furnish such financial information concerning Lessee or any Guarantor as Lessee or such Guarantor is required to provide to any of its lenders.

17. INSURANCE.

At all times during the Lease Term and until the Equipment has been returned to Lessor pursuant to the provisions hereof, Lessee will at its sole cost and expense, (i) insure the risk of physical damage (including, without limitation, theft and collision), in an amount not less than the greater of the Casualty Loss Value of the Equipment or the replacement value of the Equipment (provided that Lessee may self-insure as to any deductible amount), and (ii) insure the Equipment against liability for bodily injury, death and property damage resulting from the use and operation of the Equipment in an amount provided in Lessee's present coverage, which presently provides for coverage as set forth in Exhibit B attached hereto. The coverage policy or policies referred to in clause (ii) will name Lessor as an insured. Such policies will provide that the policies may be cancelled or materially altered by the insurer only after thirty (30) days' prior written notice to Lessor and its assignees, and that the insurer will give written notice to

Lessor in the event of nonpayment of premium by Lessee when due. The policies of insurance required under this Section shall be valid and enforceable policies issued by insurers of recognized responsibility and authorized to do an insurance business in the state in which each Item of Equipment is located. Upon the execution of this Lease and thereafter not more than thirty (30) days prior to the expiration dates of any expiring policies theretofore furnished under this Section, binders of such policies required by this Section shall be delivered by Lessee to Lessor; provided, however, that Lessor may accept copies of the policies, certificates of insurance or other satisfactory evidence in lieu of original policies. Such policies may be blanket policies covering other equipment not subject to this Lease, provided that any such blanket policy, or certificate of insurance issued with respect thereto, shall insure the Equipment covered thereby to the full extent of the coverages and amounts required hereunder. Notwithstanding the foregoing, all such insurance shall be in amounts and cover such risks customarily insured against by comparable railroad companies and shall in no event provide less coverage than is provided in respect of other similar equipment owned or leased by Lessee.

18. RETURN OF EQUIPMENT.

(a) Upon the expiration or earlier termination (except as provided in Section 14 of the Lease Term) of any Equipment, the Lessee will, at its own cost and expense, at the request of the

Lessor, deliver possession of the Cars to the Lessor upon such storage tracks of the Lessee or its Affiliates or at such interchange point as the Lessor may reasonably designate or in the absence of designation by the Lessor, then at no more than three locations as the Lessee may reasonably choose. The condition of the Cars which, at any time during the 6-month period prior to such return, were utilized in revenue service, shall upon such return shall be in Good Operating Condition.

(b) When the Lessee has assembled all Cars at the locations selected by the Lessor or the Lessee as hereinbefore provided, the Lessee shall notify the Lessor in writing of the availability of the Cars at the designated storage locations for inspection to determine whether the Cars are in Good Operating Condition. The Lessee shall permit the Lessor to store the Cars on such tracks free of charge for a period not exceeding sixty days, said 60-day period to begin upon Lessee's notification as hereinbefore provided and shall transport the same to a mutually agreed interchange point. The movement and storage of the Cars prior to Lessee's notification and within said 60-day period shall be at the expense and risk of the Lessee, provided, however, that movement and storage of any Car after such 60-day period shall continue to be at the risk of Lessee for any Cars which are not in Good Operating Condition.

(c) Unless otherwise agreed, if no movement instructions are given by the Lessor within such 60-day period, the movement and storage of any Cars which are in Good Operating Condition



after such 60-day period shall be at the expense and risk of the Lessor. If the Lessor instructs the Lessee to store any Cars which are in Good Operating Condition for a period beyond sixty days after the expiration of this Lease with respect to such Car, such additional storage shall be at the expense (\$10.00 per Car per day) and risk of the Lessor.

(d) Any such Cars which are not in Good Operating Condition after said 60-day period shall be brought up to Good Operating Condition. When such Cars are in Good Operating Condition, Lessee shall notify Lessor in writing of the availability of such Cars at their designated storage location for inspection by Lessor as aforesaid to determine whether the Cars are in Good Operating Condition. Lessor shall have one week from receipt of such notification to inspect such Cars and provide movement instructions.

(e) Storage charges of \$10.00 per Car in Good Operating Condition per day shall be paid by the Lessor to the Lessee for all Cars in Good Operating Condition stored on Lessee's tracks at Lessor's expense or stored due to Lessor not requesting that movement to an interchange point be commenced prior to the expiration of the 60-day period. During any storage period provided hereunder the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Car, to inspect the same at such reasonable time or times as the Lessee shall agree to.

(f) The assembling, delivery, storage and transporting of the Cars as hereinbefore provided in this Section 18 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Cars.

(g) "Good Operating Condition" means that the Cars will be (i) operable in conformity with the Interchange Rules, the requirements of any other governmental or non-governmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars and the Manufacturer's or Lessee's specifications for the Cars, (ii) acceptable for any interchange use, (iii) legibly marked with those marks reasonably necessary for purposes of identification to meet AAR or other requirements, and (iv) shall be without damage caused by excessive or unbalanced loading, excessive, unusual or avoidable damage caused to such Cars by open flames, vibrations, sledges or similar devices during loading or unloading operations, or damage caused to the Cars resulting from damaged safety appliances.

19. TITLES AND LIENS.

(a) The Lessee agrees that the Equipment is and shall at all times remain the sole and exclusive personal property of the Lessor, and that it has not and by the execution of this Lease it will not have or obtain any right, title or interest,

legal or equitable, in or to the Equipment, other than the right to possess and use the Equipment for the term hereof, subject to the Lessee's compliance with all of the terms and conditions of this Lease.

(b) The Lessee will at all times protect and defend, at its own cost, the title of the Lessor from and against all Claims, and shall give to the Lessor immediate notice thereof and indemnify the Lessor from any loss caused thereby, and shall not attempt to purport to sell, assign, transfer, pledge, hypothecate, mortgage or otherwise encumber in any manner the Lessor's interest in this Lease, the Equipment or any interest therein. Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against Lessor not related to the ownership of the Equipment) upon or with respect to any Equipment, including any accession thereto, or the interest of Lessor or Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

20. EVENTS OF DEFAULT; REMEDIES. If, during the Lease Term, one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment of the Interim Rent or Basic Rent hereunder and any such default shall con-

tinue for more than five (5) days after the date on which such payment was due;

(b) Default shall be made in the payment of any other obligation provided for in this Lease, and any such other default shall continue for more than ten (10) days after notice thereof to Lessee; or

(c) Lessee shall default in the observance and/or performance of any covenant, condition and agreement on the part of Lessee to be observed and/or performed under this Lease and such default shall continue for thirty (30) days after the date of notice from Lessor to Lessee specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty made by Lessee herein or in any financial report, document or certificate furnished to Lessor in connection herewith or pursuant hereto shall at any time prove to be incorrect when made in any material respect or to have contained an omission of any material fact necessary to make the statements contained therein not misleading; or

(e) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of the Lessee's rights and obligations hereunder, or Lessee shall make or permit any unauthorized sublease or transfer of any Equipment, or the possession of same; or

(f) The Lessee or any Guarantor shall become involved in financial difficulties as evidenced by its default in any payment on any obligation for borrowed money having an

outstanding principal balance (on an aggregate basis) of over \$500,000 beyond the applicable grace period; or

(g) Lessee shall make an assignment for the benefit of or enter into a composition with its creditors, or cease being in substantially the same line or lines of business in which Lessee is presently engaged, or cease doing business as a going concern, or become insolvent or bankrupt or admit in writing its inability to pay its debts as they mature, or consent to the appointment of a trustee or a receiver shall be appointed for Lessee or for a substantial part of Lessee's property without Lessee's consent and such appointment shall not be dismissed for a period of sixty (60) days, or Lessee's commencement of a voluntary case under Title 11 of the United States Code, as from time to time in effect, by the commencement against the Lessee seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction relating to the liquidation or reorganization of debtors or the modification of the rights of creditors, by the entry of a court order finding the Lessee to be bankrupt or insolvent, ordering its liquidation or reorganization or assuming custody or appointing a receiver or other custodian of its property; or

(h) a writ of attachment or execution is levied on any of the Equipment and not released or satisfied within five (5) business days thereafter; or

(i) Lessee or any Guarantor shall be in default or an event of default shall occur under any promissory note, guaranty, agreement or other liability or obligation of the Lessee or any Guarantor to Lessor, however evidenced; or

(j) An event of default shall have occurred and be continuing under Section 6.01 of that certain Preference Share Agreement by and between The United States of America and Boston and Maine Corporation dated as of June 30, 1983; then in any such case, the Lessee shall be in default hereunder and the Lessor may in its sole discretion at any time, without notice or demand, take any one or more of the following actions:

(1) immediately terminate the Lessee's rights hereunder and require the Lessee, at its expense, promptly to return all or any portion of the Equipment to the possession of the Lessor at such place within the United States as the Lessor may designate, or without demand or legal process, acting directly or through its agents, enter upon the premises of the Lessee or other premises where the Equipment may be located and take possession of the Equipment and thereupon the Lessee's right to possession thereof shall absolutely cease and terminate; or

(2) by notice to the Lessee declare immediately due and payable the present value of all unpaid rentals and other amounts payable by the Lessee hereunder at a discount rate equal to the Corporate Base Rate in effect at the time at the Shawmut Bank, N.A. including the aggregate unpaid rentals specified herein, and thereupon such unpaid rentals and other amounts shall become so due and payable; or

(3) sell all or any portion of the Equipment at public or private sale (giving the Lessee at least ten (10) days' prior notice of the time and place of any such public sale, or the time after which a private sale may be made, which notice the Lessee hereby agrees is reasonable); or

(4) proceed by appropriate court action or actions, either at law or in equity, to enforce Lessor's rights hereunder, including the right to enforce performance by the Lessee of the applicable representations, covenants, warranties, agreements and provisions hereof or to recover damages, or in aid of the exercise of any power, right or remedy granted herein.

21. ADDITIONAL REMEDIES. If an Event of Default shall occur, the Lessor may in its sole discretion, and in addition to any other remedies, at any time, without notice or demand, take any one or more of the following actions:

(a) With respect to the Equipment returned to Lessor, or repossessed by Lessor pursuant exclusively to subsection 20(i)(1), Lessor may hold or use such Equipment for any purpose whatsoever if this Lease has been terminated, or if it has not been terminated, Lessor shall either sell the same at a private or public, cash or credit sale, or re-lease the same for such term and upon such rental as shall be solely determined by Lessor. In the event of the sale or re-leasing by Lessor of any such Equipment, Lessee shall be liable for, and Lessor may forthwith recover from Lessee as liquidated damages for breach of this Lease and not as a penalty, an amount equal to the

Stipulated Loss Value of such Equipment less proceeds received or receivable by Lessor as a result of such sale or re-leasing (in the case of a re-lease, the proceeds shall be computed as the present value of the rents receivable discounted at the Corporate Base Rate in effect at the time at the Shawmut Bank, N.A.). It is agreed that the liquidated damages set forth herein constitute the actual presumed loss to the Lessor from such termination of the Lease Term.

(b) Whether or not any Equipment is repossessed by Lessor, as aforesaid, Lessee shall also be liable for, and Lessor may forthwith recover from Lessee, all unpaid rent and other sums that accrued prior to the date of Lessee's default.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE HEREBY WAIVES ANY RIGHT TO PRIOR NOTICE (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THIS LEASE) OR JUDICIAL HEARING IN CONNECTION WITH THE LESSOR'S TAKING POSSESSION OR THE LESSOR'S DISPOSITION OF ANY OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH THE LESSEE WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR ANY STATE OR OTHER JURISDICTION THEREOF. The Lessee expressly waives any damages occasioned by such taking of possession and agrees to pay all costs and expenses incurred by the Lessor in exercising any of its rights or remedies hereunder or in enforcing the provisions hereof.



(d) In addition to the foregoing, Lessor may also recover from Lessee all reasonable costs and reasonable expenses, including, without limitation, attorneys' reasonable fees, expenses, and disbursements and fees of collection agencies, incurred by Lessor in exercising any of its rights or remedies hereunder.

(e) In the event that any court of competent jurisdiction determines that any provision of Sections 20 or 21 are invalid or unenforceable in whole or in part, such determination shall not prohibit Lessor from establishing its damages sustained as a result of any breach of this Lease in any action or proceeding in which Lessor seeks to recover such damages.

(f) The rights, remedies, powers, privileges, and discretions of the Lessor under Sections 20 and 21 hereof (collectively, "Lessor's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have at law or in equity, and no delays or omissions by the Lessor in exercising or enforcing any of the Lessor's Rights or Remedies shall operate as or constitute a waiver thereof. No waiver by the Lessor of any default hereunder or under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of the Lessor's Rights and Remedies, and no other agreement or transaction, of whatever nature entered into between the Lessor and the Lessee at any time, whether before, during, or after the date hereof, shall pre-

clude the other or further exercise of the Lessor's Rights and Remedies. No waiver or modification on the Lessor's part on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. All of the Lessor's Rights and Remedies under this Master Equipment Lease Agreement or the Lease or any other agreement or transaction shall be cumulative, and not alternative or exclusive, and may be exercised by the Lessor at such time or times and in such order of preference as the Lessor in its sole discretion may determine.

22. ASSIGNMENT AND SUBLETTING.

(a) Lessee intends to operate all of the Equipment in its service or that of one of its affiliates. Lessee shall not assign, transfer or sublease any of its rights, obligations or interests in or to this Lease or any of the Equipment without the prior written consent of the Lessor, and any such purported assignment, transfer or sublease shall be void; provided, however, that Lessee may, without prior written consent of Lessor, sublease any or all of the Equipment to any affiliate of Lessee if: (i) such sublease shall not in any way release Lessee from any of its obligations or liabilities of any nature arising hereunder, (ii) any such sublease shall be expressly subject to and subordinate to this Lease, and (iii) no Event of Default or event which, with notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing. Lessee shall not, without the prior written consent of Lessor,

part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of the next succeeding sentence and except to the extent that temporary release of possession and control may be necessary for effecting maintenance and repairs to the Equipment. Subject to Sections 20 and 21, Lessee shall be entitled to the possession of the Equipment and to the use of the Equipment by it or any affiliate upon lines of railroad over which Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Equipment upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, and Lessee may receive and retain compensation for such use from railroads so using any of the Equipment; provided, however, that Lessee shall not assign or permit the assignment of any item of Equipment to service involving the regular operation and maintenance thereof outside the United States of America.

(b) The Lessor may at any time, without notice to or consent of the Lessee, assign for security or otherwise sell, assign, transfer or dispose of all or any portion of its right, title and interest in, under and to this Lease, any of the rentals and other sums at any time due or to become due or at any time payable by the Lessee under any of the provisions of

this Lease, and in and to the Equipment covered thereby. After notice of such assignment has been given by the Lessor to the Lessee, all sums payable by the Lessee hereunder, including, without limitation, all rentals specified herein and all additional rentals and other amounts payable by the Lessee hereunder, shall be paid by the Lessee to such assignee. No such assignee for security shall be obligated to perform any duty, covenant or condition required to be observed or performed by the Lessor and the Lessee agrees that the Lessee will not assert against any such assignee any claims by way of abatement, defense, setoff, counterclaim, re-coupment or otherwise which the Lessee may have by reason of any default by the Lessor under this Lease or any other agreement. Subject to the foregoing provisions, whenever the term "Lessor" is used herein, said term shall after such assignment or any further assignment mean and include any assignee or subsequent assignee then holding any rights of the Lessor hereunder and such assignee or subsequent assignee shall take such assignment subject and subordinate to the Lessee's rights under Section 13 hereof. However, nothing herein shall relieve Lessor from its obligations to Lessee hereunder. After any such assignment this Lease may not be amended or modified without the prior consent of any such assignee. Upon any assignment of this Lease or the granting of any mortgage on, or security interest in, any of the Equipment, if requested by Lessor or such assignee in accordance with the laws of the appropriate juris-

diction, Lessee shall provide Lessor with an acknowledgement of the assignment.

23. OPTION TO PURCHASE.

(a) Upon the expiration of the Primary Term with respect to each Rental Schedule, provided that Lessee has paid all rentals and all other sums then due by Lessee to Lessor, or which would become due upon the request of Lessor, as required under the provisions of this Master Equipment Lease Agreement, and provided that no Event of Default, and no event which with the giving of notice or lapse of time, or both, would constitute an Event of Default, has occurred and then remains unremedied to Lessor's satisfaction, Lessee shall have the option, exercisable on at least ninety (90) days' prior notice to Lessor to purchase the Equipment with respect to all, but not less than all (except for items that have been destroyed and for which Lessor has received payment of the Stipulated Loss Value with respect thereto) of the Equipment then subject to said Rental Schedule, at the purchase price of \$1.00.

(b) Upon payment by Lessee to Lessor of the purchase price, in cash or by check, Lessor shall deliver to Lessee title to the Equipment evidenced by a valid bill of sale conveying title from Lessor to Lessee.

24. RECORDING AND FILING. Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303. Lessee will from time to time do and perform any other act and will execute, acknowl-

edge, deliver, file, register, deposit, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interests in the Equipment, or for the purpose of carrying out the intention of this Lease; and Lessee will promptly furnish to Lessor evidences of all such filings, registering, depositing or recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

25. FURTHER ASSURANCES. The Lessee shall execute and deliver to the Lessor, upon the Lessor's request, such documents, papers, instruments and assurances that the Lessor deems necessary or desirable for the confirmation of the Lessor's rights hereunder. In furtherance thereof, the Lessee agrees to take whatever action may be necessary to enable the Lessor or any assignee of the Lessor to file, register or record, and re-file, re-register and re-record, this Lease and any financing statements or other documents requested by the Lessor or any assignee of the Lessor pursuant to the regulations of the Interstate Commerce Commission, the Uniform Commercial Code or otherwise. The Lessee authorizes the Lessor to effect any such filing (including, where permitted by applicable law, the filing of any financing statements without the signature of the Lessee) and the Lessor's expenses with respect thereto shall be payable by the Lessee on demand except expenses of assignment.

NO SUCH FILING SHALL BE CONSTRUED AS AN INDICATION THAT THIS LEASE IS A LEASE INTENDED AS SECURITY.

26. MISCELLANEOUS.

26.1 Late Charges on Overdue Payments. Any nonpayment of Rent or Additional Rent or other amounts due hereunder shall result after a period of ten (10) days in the obligation on the part of Lessee promptly to pay also an amount equal to the Default Interest Rate of the overdue Rent or Additional Rent or other amounts for the period of time which they are overdue.

26.2 Notices; Etc. All notices, requests, demands, consents, acknowledgements and other communications required or permitted to be given by either party hereto to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, or by receipted hand delivery:

(a) If to the Lessor to:

Shawmut Bank, N.A.  
Equipment Finance and Leasing  
1 Federal Street  
Boston, Massachusetts 02211;

or to such other person at such address as the Lessor shall designate to Lessee in writing;

(b) If to the Lessee to:

Springfield Terminal Railway Company  
P.O. Box 490  
Sterling, Massachusetts 01545

With a copy to:

Guilford Transportation Industries  
Iron Horse Park  
No. Billerica, Massachusetts 01862-1682

ATTN: Richard Long

or to such other person at such address as the Lessor shall designate to Lessee in writing.

Any such notice or other communication shall be deemed received upon the earlier of receipt or written confirmation of receipt.

26.3 Entire Agreement; Amendments; Waivers. This Master Equipment Lease Agreement, including any Schedule and Exhibit hereto, sets forth the entire agreement between the parties with respect to the Equipment and the other subject matter of the Master Equipment Lease Agreement and supersedes any prior agreement relating thereto. Neither this Master Equipment Lease Agreement nor any provision hereof nor any Schedule or Exhibit hereto may be amended, modified, waived or discharged orally, but only by an instrument in writing signed by an officer of the party against which such amendment, modification, waiver or discharge is sought to be enforced; provided, however, that the Lessee authorizes the Lessor to insert herein the Manufacturer's serial numbers and any other information more specifically identifying the Equipment. Any failure by the Lessor to require strict performance by the Lessee of any terms, covenants or agreements herein shall not be construed as a consent or waiver of any other breach of the same or any other term, covenant or agreement herein. Any amendment, modification, waiver or discharge to any Schedule or Exhibit hereto shall be deemed to be an amendment, modification, waiver or discharge here.



26.4 Countersignature. This Master Equipment Lease Agreement and any Lease is not binding upon Lessor until a copy executed by the Lessee is received at the main office of the Lessor and is countersigned by a properly designated officer of the Lessor.

26.5 Governing Law. Lessor and Lessee agree that this Master Equipment Lease Agreement and any Lease shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts (without giving effect to conflicts of law provisions). The Lessee hereby irrevocably consents to the non-exclusive jurisdiction of the United States District Court for the District of Massachusetts and any court of The Commonwealth of Massachusetts which sits in the City of Boston over any action, suit or proceeding arising hereunder. The Lessee further waives any personal service of any and all process upon it and consents that all such service of process may be made by certified mail, return receipt requested, addressed to the Lessee at the address referred to in subsection 28.2 and service so made shall be complete when received by Lessee at such address.

26.6 Severability; Survival of Obligations; Successors and Assigns, Etc. If any provision of this Master Equipment Lease Agreement or any Lease conflicts with any statute or rule of law in any jurisdiction wherein it may be sought to be enforced, then said provision shall be deemed null and void to such extent, but the invalidity or unenforceability of any such pro-

vision shall not effect the validity or enforceability of any other term or provisions hereof or thereof. All obligations of the Lessee hereunder shall continue until full performance has been rendered and shall not be released by any cancellation or termination hereof by the Lessor, but no obligation of the Lessor hereunder shall survive the term or earlier termination of this Master Equipment Lease Agreement or any Lease. This Master Equipment Lease Agreement and such Lease shall be binding upon the parties hereto and thereto, their heirs, legal representatives, successors and permitted assigns. Except as set forth herein, no Lessee shall have any right to subrogation, reimbursement or indemnity whatsoever and no right of recourse to any collateral for the obligations of the Lessee hereunder unless and until all of said obligations have been paid or performed in full. Should the Lessor permit the use of the Equipment beyond the term specified herein, the obligation of the Lessee to pay the rental specified and additional rentals and to perform the other obligations of the Lessee under this Master Equipment Lease Agreement or such Lease shall continue but such permissive use shall not be construed as a renewal of the term hereof nor a waiver of any right or continuation of any obligation of the Lessor, and the Lessor may take possession of the Equipment at any time upon demand after thirty (30) days' notice, and the Lessee hereby expressly waives any right to prior notice and hearing with respect to any prejudgment remedy. Time is of the essence of this Master

Equipment Lease Agreement in each and all of its provisions. Neither the Lessor nor the Lessee makes any representation, express or implied, concerning the legal character of the transaction evidenced hereby or as to the treatment thereof available to the Lessee for financial reporting or tax purposes. This Master Equipment Lease Agreement is not binding on the Lessor until accepted in writing by the Lessor at its principal place of business.

26.7 Headings. The headings of the Sections and subsections of this Master Equipment Lease Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of either such document.

26.8 Counterparts. This Master Equipment Lease Agreement may be executed in several identical counterparts, each of which when executed by the parties hereto and delivered shall be an original, but all of which together shall constitute a single instrument. In making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart. Lessor and Lessee agree that to the extent that this Lease constitutes chattel paper under the Uniform Commercial Code, no security interest in this Lease may be created through the transfer or possession of any counterpart of this Lease other than only through transfer and possession of that counterpart of the Rental Schedule to this Lease marked "Lessor's Original."


26.9 Other Provisions. See Attachment I which is incorporated herein by reference.

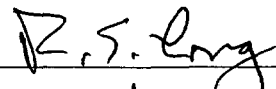
The undersigned agree to all the terms and conditions set forth above and In Witness Whereof have executed this Master Equipment Lease Agreement. The term "Lessee" as used herein shall mean and include any and all Lessees who sign hereunder, each of whom shall be jointly and severally bound hereby. This Master Equipment Lease Agreement is executed under and pursuant to due authorization.

THE LESSEE ACKNOWLEDGES RECEIVING AND  
HAVING READ A COPY OF THIS MASTER  
EQUIPMENT LEASE AGREEMENT

LESSEE:

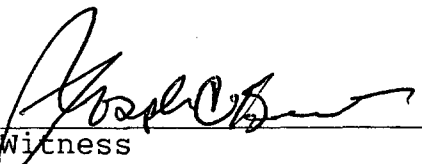
SPRINGFIELD TERMINAL RAILWAY  
COMPANY

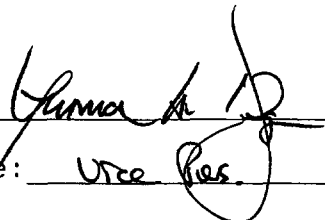
  
Witness

BY:   
Title: Asst. Treasurer  
Accepted on July 13, 1982

LESSOR:

SHAWMUT BANK, N.A.

  
Witness

BY:   
Title: Vice Pres.

LESSOR'S  
ORIGINAL

(Acknowledgement for Corporation)

COMMONWEALTH OF MASSACHUSETTS)

) ss.:

COUNTY OF SUFFOLK )

On this 13th day of July, 1987 before me appeared Richard E. Long, to me personally known, who, being by me duly sworn (or affirmed), did say that he resides at 54 St. Germaine Street, Boston, Massachusetts, that he is the Assistant Treasurer of Springfield Terminal Railway Company, a corporation organized under the laws of Vermont, the corporation described in and which executed the above instrument, that he executed such instrument on behalf of said corporation by authority of its board of directors and that he acknowledges the execution of the said instrument as the free act and deed of said corporation and that the statements contained therein are true and correct in all respects.

(SEAL)

Antoinette M. Bacci  
Notary Public

My commission expires on: 10/9/92

(Acknowledgement for Corporation)

COMMONWEALTH OF MASSACHUSETTS)

) ss.:

COUNTY OF SUFFOLK )

On this 13th day of July, 1987 before me appeared Thomas H. Dodge, to me personally known, who, being by me duly sworn (or affirmed), did say that he resides at 15 Indian Trail, Sandwich, Massachusetts, that he is a Vice President of Shawmut Bank, N.A., a national association, the association described in and which executed the above instrument, that he executed such instrument on behalf of said association by authority of its board of directors and that he acknowledges the execution of the said instrument as the free act and deed of said association and that the statements contained therein are true and correct in all respects.

(SEAL)

Antoinette M. Bacci  
Notary Public

My commission expires on: 10/9/92

ATTACHMENT I

None

EXHIBIT A

RENTAL SCHEDULE NO. A-\_\_\_\_\_  
AND  
CERTIFICATE OF INSPECTION AND ACCEPTANCE

RENTAL SCHEDULE No. A-\_\_\_\_\_ and CERTIFICATE OF INSPECTION AND ACCEPTANCE to Master Equipment Lease dated as of July 13, 1987 (the "Lease") by and between the undersigned, the terms and conditions of which are hereby incorporated herein by reference. Lessee hereby (a) authorizes Lessor to order for lease to Lessee the equipment described herein (the "Equipment") and to insert hereon the Lease Commencement Date for such Equipment upon Lessee's acceptance of same for lease, (b) agrees to lease such equipment from Lessor effective the Lease Commencement Date thereof and for the Lease Term specified below, and (c) agrees to pay Lessor the rent, in the amounts and at the times specified below, for each item of Equipment. All of the terms used herein which are defined in the Lease shall have the same meaning as so defined.

EQUIPMENT DESCRIPTION:

<u>Item</u> <u>No.</u>	<u>Serial</u> <u>No.</u>	<u>Unit No.</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Acquisition</u> <u>Cost</u>
---------------------------	-----------------------------	-----------------	-------------	-------------	--------------	-----------------------------------

See Exhibit I attached hereto and incorporated herein by reference.

TOTAL ACQUISITION COST:           \$

STIPULATED LOSS VALUES:        See Exhibit II attached hereto and incorporated herein by reference.

EQUIPMENT LOCATED AT:           See Exhibit I attached hereto and incorporated herein by reference.

LEASE TERM:

Interim Term:

Primary Term:

Commencement Date:

Commencement Date:

Expiration Date:

Expiration Date:

LEASE COMMENCEMENT DATE:

PAYMENT DATES: The Interim Term rent payment is due and payable \_\_\_\_\_ . The remaining rentals commence \_\_\_\_\_ and continue monthly in arrears through and including \_\_\_\_\_

BASIC RENT:

Basic Rent Per Day: \$ \_\_\_\_\_ (See Note 1)  
Basic Rent Per Period: \$ \_\_\_\_\_ (See Note 2)

NOTE 1: Basic Rent Per Day is applicable during the Interim Term and is payable on the first Payment Date.

NOTE 2: Basic Rent Per Period and Basic Rent Per Day is computed by multiplying the Acquisition Cost as set forth above by:

Periodic Lease Rate Factor: \_\_\_\_\_ %  
Per Diem Lease Rate Factor: \_\_\_\_\_ %

The undersigned, being duly authorized representatives of the Lessor and the Lessee hereby CERTIFY that the units of Equipment described above have been duly delivered to Lessee in good order and duly inspected and accepted by the Lessee as of the Lease Commencement Date reflected above on behalf of the Lessee as conforming in all respects with the requirements and provisions of the Lease.

LESSOR:

SHAWMUT BANK, N.A.

LESSEE:

SPRINGFIELD TERMINAL RAILWAY  
COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date of Acceptance (Lease Commencement Date): \_\_\_\_\_



(Acknowledgement for Corporation)

STATE OF                    )  
                              ) ss.:  
COUNTY OF                 )

On this \_\_\_\_\_ day of July, 1987 before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn (or affirmed), did say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of Springfield Terminal Railway Company, a corporation organized under the laws of Vermont, the corporation described in and which executed the above instrument, that he/she executed such instrument on behalf of said corporation by authority of its board of directors and that he/she acknowledges the execution of the said instrument as the free act and deed of said corporation and that the statements contained therein are true and correct in all respects.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires on:

(Acknowledgement for Corporation)

STATE OF                    )  
                              ) ss.:  
COUNTY OF                 )

On this \_\_\_\_\_ day of July, 1987 before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn (or affirmed), did say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of Shawmut Bank, N.A., a national association, the association described in and which executed the above instrument, that he/she executed such instrument on behalf of said association by authority of its board of directors and that he/she acknowledges the execution of the said instrument as the free act and deed of said association and that the statements contained therein are true and correct in all respects.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires on:

EXHIBIT I  
TO  
RENTAL SCHEDULE NO. \_\_\_\_\_  
CERTIFICATE OF INSPECTION AND ACCEPTANCE

DESCRIPTION OF EQUIPMENT

See \_\_\_\_\_ page(s) attached hereto and incorporated  
herein by reference.

EXHIBIT II  
TO  
RENTAL SCHEDULE NO. \_\_\_\_\_  
AND  
CERTIFICATE OF INSPECTION AND ACCEPTANCE

STIPULATED LOSS VALUES

(Stated as Percentage of Acquisition Cost)

If Casualty Occurrence Occurs On Or After Payment Date No. _____	<u>Stipulated Loss Value</u>
--	----------------------------------

Lease Commencement Date

1	%
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
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14	
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EXHIBIT II  
TO  
RENTAL SCHEDULE NO. \_\_\_\_\_  
AND  
CERTIFICATE OF INSPECTION AND ACCEPTANCE

STIPULATED LOSS VALUES (continued)

If Casualty Occurrence Occurs On Or After <u>Payment Date No. _____</u>	<u>Stipulated Loss Value</u>
40	%
41	
42	
43	
44	
45	
46	
47	
48 and thereafter	

VS-5464/c  
7/13/87

Exhibit B

Alexander & Alexander Inc.  
100 Light Street  
Baltimore, Maryland 21202  
Telephone 301 547-2500  
TWX 710-234-1069

Alexander  
& Alexander

# CERTIFICATE OF INSURANCE

---

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy(ies) stated herein.

NAMED INSURED: GUILFORD TRANSPORTATION INDUSTRIES, INC.  
Iron Horse Park  
North Billerica, MA 01862

PERIOD: May 1, 1987 through May 1, 1988  
12:01 A.M. Standard time at the mailing address  
stated above

CERTIFICATE HOLDER: Shawmut Bank, <sup>N.A.</sup>~~of Boston~~  
Attn: Mr. Thomas H. Dodge  
Vice President  
One Federal Street  
Boston, MA 02211

Are added as Loss Payee as their interest may appear.

---

This is to certify that insurance as described herein has been issued to the insured named above for the period indicated. The insurance afforded by the policy(ies) described herein is subject to all the terms, exclusions and conditions of such policy(ies). Now, therefore, the insurance in effect is as follows:

All Risk of Physical Loss or Damage including Flood and Earthquake on Real & Personal Property, Bridges, Diesel Locomotives, Owned and Foreign Rolling Stock and Bill of Lading.

\$7,000,000 per occurrence and aggregate as respects Flood & Earthquake.

EXCESS OF:  
\$3,000,000 self retained

Continued . . .

Alexander & Alexander Inc.  
100 Light Street  
Baltimore, Maryland 21202  
Telephone 301 547-2800  
TWX 710-234-1030



## CERTIFICATE OF INSURANCE

---


Continued . . .

-2-

Should any of the above described policy(ies) be cancelled before the expiration date thereof, Alexander & Alexander Inc. will endeavor to give 30 days written notice to the party to whom this certificate is issued, but failure to give such notice shall impose no obligation or liability of any kind upon Alexander & Alexander Inc., its agents or representatives.

DATE ISSUED:  
June 5, 1987

FOR ALEXANDER & ALEXANDER INC.

  
John Lackovic  
Assistant Vice President

Alexander & Alexander, Inc.  
100 Light Street  
Baltimore, Maryland 21201  
Telephone: (410) 527-6000  
Telex: 511546-1700

**Alexander  
& Alexander**

# **CERTIFICATE OF INSURANCE**

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy(ies) stated herein.

**NAMED INSURED:**

**GUILFORD TRANSPORTATION INDUSTRIES, INC.  
BOSTON & MAINE CORPORATION  
DELAWARE & HUDSON RAILWAY COMPANY  
Iron Horse Park  
North Billerica, MA 01862**

It is agreed that such insurance as is afforded by the policy applies only to the interest of Financial Institutions from which Boston & Maine Corporation and Maine Central Railroad Company leases equipment which shall be set forth in the policy.

It is further agreed that no coverage is afforded to the interest of Guilford Transportation Industries, Inc., Boston & Maine Corporation or Maine Central Railroad Company.

**PERIOD:**

**September 16, 1986 through September 16, 1987  
12:01 A.M. Standard time at the mailing address  
stated above**

**CERTIFICATE HOLDERS:**

**Shawmut Bank of Boston, N. A.  
1 Federal Street  
Boston, MA 02211  
Attn: Thomas H. Dodge  
Vice President  
Equipment Finance & Leasing**

Shawmut Bank of Boston, N. A. is added to the policy as a Named Insured as respects the lease agreement dated 7/13/87 for 35 Locomotives, Springfield Terminal Railway Company numbers ST 614 through ST 629 and ST 631 through ST 649 and 1 Kershaw Brush Cutter Serial #32-142-87 and 1 Porter Tie Insertor.

Continued . . .

Alexander & Alexander, Inc.  
100 Light Street  
Baltimore, Maryland 21202  
Telephone (410) 528-2600  
Telex 410220 ALEX

**Alexander  
& Alexander**

# **CERTIFICATE OF INSURANCE**

Continued . . .

-2-

This is to certify that insurance as described herein has been issued to the insured named above for the period indicated. The insurance afforded by the policy(ies) described herein is subject to all the terms, exclusions and conditions of such policy(ies). Now, therefore, the insurance in effect is as follows:

Coverage:  
Contingent General Liability


Limits:  
\$5,000,000 each occurrence  
\$5,000,000 in the aggregate as respects all coverages combined

<u>Insurer:</u>	<u>Policy No.</u>	<u>Participation</u>
Lexington Insurance Co.	5530049	100.00%

Should any of the above described policy(ies) be cancelled before the expiration date thereof, Alexander & Alexander, Inc. will endeavor to give 30 days written notice to each party to whom this certificate is issued, but failure to give such notice shall impose no obligation or liability of any kind upon Alexander & Alexander Inc., its agents or representatives.

FOR ALEXANDER & ALEXANDER, INC.

DATE ISSUED:  
July 13, 1987

  
\_\_\_\_\_  
John L. Swen III  
Assistant Vice President

07.13.87 05:27 PM P03